
STATUTORY INSTRUMENTS

2011 No. 1072

The Network Rail (Hitchin (Cambridge Junction)) Order 2011

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

17.—(1) Network Rail may acquire compulsorily—

- (a) so much of the land shown on the works and land plans as lying within the limits of deviation as may be required for the purposes of the authorised works; and
- (b) so much of the land specified in columns (1) and (2) of Schedule 7 (acquisition of certain lands) (being land shown on the works and land plans and described in the book of reference) as may be required for the purpose specified in relation to that land in column (3) of that Schedule,

and may use any land so acquired for those purposes or for any other purposes that are ancillary to its railway undertaking.

(2) This article is subject to articles 21 (new rights, etc., only to be acquired in certain lands) and 24 (temporary use of land for construction of works).

Application of Part 1 of the Compulsory Purchase Act 1965

18.—(1) Part 1 of the 1965 Act, in so far as not modified by or inconsistent with the provisions of this Order, shall apply to the acquisition of land under this Order—

- (a) as it applies to a compulsory purchase to which the 1981 Act applies; and
- (b) as if this Order were a compulsory purchase order under that Act.

(2) Part 1 of the 1965 Act, as applied by paragraph (1), shall have effect as if section 4 (which provides a time limit for compulsory purchase of land) and paragraph 3(3) of Schedule 3 (which makes provision as to the giving of bonds) were omitted.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

19.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(1) shall apply as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as applied by paragraph (1), shall have effect with the following modifications.

- (3) In section 3 (preliminary notices) for subsection (1) there shall be substituted—

(1) 1981 c. 66.

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority shall include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.”.

(4) In that section, in subsection (2), for “(1)(b)” there shall be substituted “(1)” and after “given” there shall be inserted “and published”.

(5) In that section, for subsections (5) and (6) there shall be substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

(6) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” there shall be inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) shall be omitted.

(7) In section 7 (constructive notice to treat) in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” shall be omitted.

(8) References to the 1965 Act shall be construed as references to that Act as applied to the acquisition of land under article 18 (application of Part 1 of the Compulsory Purchase Act 1965).

Power to acquire new rights

20.—(1) Network Rail may acquire compulsorily such easements or other rights over any land referred to in paragraph (1)(a) or (b) of article 17 (power to acquire land) as may be required for any purpose for which that land may be acquired under that provision, by creating them as well as by acquiring easements or other rights already in existence.

(2) Network Rail may impose such restrictive covenants over any land referred to in paragraph (1) (a) or (b) of article 17 which lies, or will on completion of the authorised works lie, beneath the authorised railway as may be required for the purpose of protecting the authorised railway where it is running on the viaduct comprised in Work No. 1.

(3) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 8 (modification of compensation and compulsory purchase enactments for creation of new rights)) where Network Rail acquires a right over land under paragraph (1) or the benefit of a restrictive covenant over land under paragraph (2), Network Rail shall not be required to acquire a greater interest in that land.

(4) Schedule 8 shall have effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

(5) In relation to land to which this paragraph applies, this article, so far as relating to the acquisition or creation of easements or other rights by virtue of paragraph (1), shall be treated as also authorising acquisition by a statutory utility in any case where the Secretary of State consents in writing.

(6) Paragraph (5) applies to land to which this article applies and which is or will be required for use in relocating any apparatus which it is expedient to divert or replace in consequence of the carrying out of work authorised by the Order; and, in that paragraph, “statutory utility” means a licence holder within the meaning of Part 1 of the Electricity Act 1989⁽²⁾, a gas transporter within the meaning of Part 1 of the Gas Act 1986⁽³⁾, a water undertaker within the meaning of the Water Industry Act 1991⁽⁴⁾, a sewerage undertaker within the meaning of Part 1 of that Act and any local authority which is a relevant local authority for the purposes of section 97 of that Act.

New rights, etc., only to be acquired in certain lands

21.—(1) In the case of land specified in Schedule 9 (land in which new rights, etc., only may be acquired), Network Rail’s powers of compulsory acquisition under article 17 (power to acquire land) shall be limited to—

- (a) the acquisition of such easements or other new rights in the land as it may require for the purposes of constructing, maintaining, protecting, renewing and using the authorised works; or
- (b) where the land lies, or will on completion of the authorised works lie, beneath the authorised railway, the imposition of such restrictive covenants over the land as may be required for the purpose of protecting the authorised railway where it is running on the viaduct comprised in Work No. 1.

(2) Where Network Rail acquires easements or other new rights or acquires the benefit of a restrictive covenant over the land specified in Schedule 9, paragraph (3) of article 20 (power to acquire new rights) shall apply as it applies to the acquisition of a new right under that article.

(3) Nothing in this article shall preclude Network Rail from exercising its powers under article 24 (temporary use of land for construction of works) in the case of land specified in Schedule 9.

Power to acquire subsoil only

22.—(1) Network Rail may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1)(a) or (b) of article 17 (power to acquire land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where Network Rail acquires any part of or rights in the subsoil of land under paragraph (1) it shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) shall not prevent article 28 (acquisition of part of certain properties) from applying where Network Rail acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Rights under or over streets

23.—(1) Network Rail may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised works and may use the subsoil or air-space for those purposes or any other purpose ancillary to its railway undertaking.

(2) Subject to paragraph (4), the power under paragraph (1) may be exercised in relation to a street without Network Rail being required to acquire any part of the street or any easement or right in the street.

(2) 1989 c. 29.

(3) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995, c. 45, and was further amended by section 76 of the Utilities Act 2000, c. 27.

(4) 1991 c. 56.

(3) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without Network Rail acquiring any part of that person's interest in the land, and who suffers loss by the exercise of that power, shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) Paragraph (2) shall not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(5) Compensation shall not be payable under paragraph (3) to any person who is an undertaker to whom section 85 of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

(6) Network Rail may exercise the powers conferred by paragraph (1) and appropriate any other land shown on the works and land plans and described in the book of reference as may be required for the purposes of the authorised works, regardless of anything done pursuant to Part 1 of, or Schedule 2 to, the Commons Act 2006⁽⁵⁾.

Temporary possession of land

Temporary use of land for construction of works

24.—(1) Network Rail may, in connection with the carrying out of the authorised works—

- (a) enter upon and take temporary possession of—
 - (i) the land specified in columns (1) and (2) of Schedule 10 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the authorised works specified in column (4) of that Schedule; and
 - (ii) any other land within Order limits in respect of which no notice of entry has been served under section 11 of the 1965 Act (other than in connection with the acquisition of rights only) or no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declaration) Act 1981⁽⁶⁾;
- (b) remove any buildings and vegetation from that land; and
- (c) construct temporary works (including the provision of means of access) and buildings on the land.

(2) Not less than 14 days before entering upon and taking temporary possession of land under this article Network Rail shall serve notice of the intended entry on the owners and occupiers of the land.

(3) Network Rail may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of the land specified in columns (1) and (2) of Schedule 10, after the end of the period of 2 years beginning with the date of completion of the work specified in relation to that land in column (4) of that Schedule; or
- (b) in the case of the land referred to in paragraph (1)(a) or (b) of article 17 (power to acquire land), after the end of the period of 2 years beginning with the date of completion of the work for which temporary possession of the land was taken unless Network Rail has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a

⁽⁵⁾ 2006 c. 26.

⁽⁶⁾ 1981 c. 66.

declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 in relation to that land.

(4) Subject to paragraph (5), before giving up possession of land of which temporary possession has been taken under this article, Network Rail shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but Network Rail shall not be required to replace a building removed under this article.

(5) Network Rail shall not be obliged to reinstate plot number 40 (the existing access road through the National Grid Operational Centre) following the completion of Work No. 5.

(6) Network Rail shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.

(8) Without affecting article 44 (no double recovery), nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

(9) The powers of compulsory acquisition of land conferred by this Order shall not apply in relation to the land referred to in paragraph (1)(a)(i) except that Network Rail shall not be precluded from—

- (a) acquiring new rights over, or imposing restrictive covenants affecting, any part of that land under article 20 (power to acquire new rights) or article 21 (new rights, etc., only to be acquired in certain lands); or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 22 (power to acquire subsoil only).

(10) Where Network Rail takes possession of land under this article, it shall not be required to acquire the land or any interest in it.

(11) Section 13 of the 1965 Act shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 18(1) (application of Part 1 of the Compulsory Purchase Act 1965).

Temporary use of land for maintenance of works

25.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any of the scheduled works, Network Rail may—

- (a) enter upon and take temporary possession of any land within the Order limits reasonably required for the purpose of maintaining the work or any ancillary works connected with it or securing the safe operation of any such work; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) shall not authorise Network Rail to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article Network Rail shall serve notice of the intended entry on the owners and occupiers of the land.

(4) Network Rail may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of works for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, Network Rail shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) Network Rail shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.

(8) Without affecting article 44 (no double recovery), nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where Network Rail takes possession of land under this article, it shall not be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 18(1) (application of Part 1 of the Compulsory Purchase Act 1965).

(11) In this article "the maintenance period", in relation to a scheduled work, means the period of 5 years beginning with the date on which the work is opened for use.

Compensation

Disregard of certain interests and improvements

26.—(1) In assessing the compensation payable to any person on the acquisition from that person of any land under this Order, the tribunal shall not take into account—

- (a) any interest in land; or
- (b) any enhancement of the value of any interest in land by reason of any building erected, works executed or improvement or alteration made on relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works or the making of the improvement or alteration was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(2) In paragraph (1) "relevant land" means the land acquired from the person concerned or any other land with which that person is, or was at the time when the building was erected, the works executed or the improvement or alteration made, directly or indirectly concerned.

Set-off for enhancement in value of retained land

27.—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal shall set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity which will accrue to that person by reason of the construction of the authorised works.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) or the imposition of any restrictive covenants affecting land, under article 20 (power to acquire new rights) or 21 (new rights, etc., only

to be acquired in certain lands), the tribunal shall set off against the value of the rights so acquired or the restrictive covenants so imposed—

- (a) any increase in the value of the land over which the new rights are required or the restrictive covenants are imposed; and
- (b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity,

which will accrue to that person by reason of the construction of the authorised works.

(3) The 1961 Act shall have effect, subject to paragraphs (1) and (2), as if this Order were a local enactment for the purposes of that Act.

Supplementary

Acquisition of part of certain properties

28.—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 18 (application of Part 1 of the Compulsory Purchase Act 1965)) in any case where—

- (a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on Network Rail a counter-notice objecting to the sale of the land subject to the notice to treat and stating that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner shall be required to sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner shall be required to sell only the land subject to the notice to treat shall, unless Network Rail agrees to take the land subject to the counter-notice, be referred to the tribunal.

(5) If on such a reference the tribunal determine that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner shall be required to sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determine that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat shall be deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determine that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but

(b) the material detriment is confined to a part of the land subject to the counter-notice, the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which Network Rail is authorised to acquire compulsorily under this Order.

(8) If Network Rail agrees to take the land subject to the counter-notice, or if the tribunal determine that—

(a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and

(b) the material detriment is not confined to a part of the land subject to the counter-notice, the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which Network Rail is authorised to acquire compulsorily under this Order.

(9) In any case where by virtue of a determination by the tribunal under this article a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, Network Rail may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and if it does so shall pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, Network Rail shall pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

Extinguishment or suspension of private rights of way

29.—(1) Subject to the provisions of this article, all private rights of way over land subject to compulsory acquisition under this Order shall be extinguished—

(a) as from the date of acquisition of the land by Network Rail, whether compulsorily or by agreement; or

(b) on the date of entry on the land by Network Rail under section 11(1) of the 1965 Act, whichever is sooner.

(2) Subject to the provisions of this article, all private rights of way over land owned by Network Rail which, being within the limits of land which may be acquired shown on the works and land plans, is required for the purposes of this Order shall be extinguished on the appropriation of the land for any of those purposes by Network Rail.

(3) Subject to the provisions of this article, all private rights of way over land of which Network Rail takes temporary possession under this Order shall be suspended and unenforceable for as long as Network Rail remains in lawful possession of the land.

(4) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article does not apply in relation to any right of way to which section 271 or 272 of the 1990 Act (extinguishment of rights of statutory undertakers, etc.) or paragraph 2 of Schedule 11 (statutory undertakers, etc.) applies.

(6) Paragraphs (1), (2) and (3) shall have effect subject to—

- (a) any notice given by Network Rail before the completion of the acquisition of the land, Network Rail's appropriation of it, Network Rail's entry onto it or Network Rail's taking temporary possession of it, as the case may be, that any or all of those paragraphs shall not apply to any right of way specified in the notice; and
 - (b) any agreement made (whether before or after any of the events mentioned in subparagraph (a) and before or after the coming into force of this Order) between Network Rail and the person in or to whom the right of way in question is vested or belongs.
- (7) If any such agreement as is referred to in paragraph (6)(b) which is made with a person in or to whom the right of way is vested or belongs is expressed to have effect also for the benefit of those deriving title from or under that person, it shall be effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

Open space

30.—(1) Network Rail shall not exercise the powers conferred by article 17 (power to acquire land), article 20 (power to acquire new rights) or article 21 (new rights, etc., only to be acquired in certain lands) in respect of the open space land until Network Rail has acquired the exchange land and North Hertfordshire District Council has certified that a scheme for the provision of the exchange land as open space has been implemented to its satisfaction.

(2) On the requirements of paragraph (1) being satisfied, the exchange land shall vest in North Hertfordshire District Council subject to the equivalent rights, trusts and incidents as attached to the open space land; and the open space land shall be discharged from all rights, trusts and incidents to which it was previously subject, or in a case where rights are being acquired over that land, from all such rights, trusts and incidents as are inconsistent with the exercise of those rights.

(3) In this article—

“the exchange land” means the land comprised in plots numbered 18 and 21 to the extent shown coloured pink on the open space plan; and

“the open space land” means the open space comprised in plots numbered 16, 22 and 24 to the extent shown coloured blue, green and yellow on the open space plan.

Time limit for exercise of powers of acquisition

31.—(1) After the end of the period of 5 years beginning with the day on which this Order comes into force—

- (a) no notice to treat shall be served under Part 1 of the 1965 Act as applied to the acquisition of land by article 18 (application of Part 1 of the Compulsory Purchase Act 1965); and
- (b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 19 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The powers conferred by article 24 (temporary use of land for construction of works) shall cease at the end of the period referred to in paragraph (1), but nothing in this paragraph shall prevent Network Rail remaining in possession of land after the end of that period, if the land was entered and possession of it was taken before the end of that period.